IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 16/2006

Laxmi T. Khorjuvekar,
major in age, residing at Near Sinari
Petrol Pump, Nevgi Bund Manser,
Mala, Panaji, Goa.
Represented by her duly constituted
Authority Shri Rajendra Trivikram
Khorjuvenkar, occupation service,
residing at H.No.4/144, Mala, Panaji, Goa. ..... Applicant.

V/s.

Corporation of the City of Panaji,
through its Commissioner, Panaji, Goa. ..... Respondent.

Mr. M. S. Joshi, Advocate for the applicant.

Mr. A. Mashelkar, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

DATE : 21ST NOVEMBER, 2006.

ORAL JUDGMENT :

Heard learned Counsel for both the parties. Rule. Rule made returnable forthwith, by consent.

2. This revision petition is aimed against the Judgment and

Order passed by the IInd Additional District Judge, North Goa, Panaji, dismissing the application of the applicant under Section 342 of the City of Panaji Corporation Act, 2002 ("the Act" for short).

3. The factual background, in brief, of this application appears to be to the effect that the husband of the applicant was lessee of the water impounded area known as "Toloi Cantor" belonging to one Jairman Nevgi and after death of her husband, the lease was continued in the applicant's name. In the month of May, 2000, she learnt that the Irrigation Department, Government of Goa was planning to install pipe sluice gate to Nevgi Bund, Mala, Panaji and accordingly, she made a representation dated 12.5.2000 to the Chief Engineer, Irrigation Department stating that the gate would reduce the velocity of the water and lessen the quality of marshy lands which would reduce the production of fishing and prawns hatchery and lessen the prawn catch and as such, she claimed annual compensation of Rs.95,000/- for the losses due to the installation of the pipe sluice gates. It was stated that the Superintending Engineer, vide his reply dated 18.5.2000 informed the applicant that the said work was done at the instance of the Panaji Municipal Council and hence, the representation should be made to the Chief Officer, Panaji Municipal Council. Accordingly, she made a representation and received reply, calling

upon her to submit certain documents. Further, the Chief Officer by letter dated 22.5.2001 informed Shri Shamsunder J. Nevgi about the representation made by the applicant and further requested him to offer his comments. Accordingly, the said Shri Nevgi offered his comments by reply dated 4.6.2001. Inspection report from the Director of Fisheries was also sought by the Chief Officer. By order dated 3.8.2001, she informed the Chief Officer that almost all the water was being drained through the newly constructed sluice gate and that very little water was flowing through the old one and that she was making expenditure of Rs.1,01,000/- as per the breakup given in the said letter and she was getting profit of Rs.1,00,000/- which had been totally wiped out due to the act of the respondent of fitting up new sluice gates. By letter dated 27.6.2002, the Accounts Taxation Officer of the Panaji Municipal Council informed the applicant that the Council had partly considered her request of compensation towards damages caused to her fishing rights upon construction of the sluice gate at Nevgi Nagar and further requested the applicant to collect the cheque of Rs.10,000/- from the Accounts Section within particular time. The said cheque was subsequently collected by her under protest. Hence, the application under Section 342 of the Act was filed for enhancement of the compensation to the extent of Rs.95,000/- per annum.

4. The application was stoutly challenged by the respondent on various grounds, inter alia, denying the allegation that the applicant was put to loss to the extent of Rs.95,000/-. According to the respondent, the loss was assessed at Rs.10,000/- which amount was sanctioned and paid and, therefore, the application was sought to be rejected.

5. The learned Addl. District Judge, Panaji adjudicated the dispute as contemplated under Section 342 of the Act and came to the conclusion that the applicant was not in a position to establish the allegation that she was put to loss to the extent of Rs.95,000/- per annum and, as such, the application came to be dismissed and hence, the present revision.

6. Now, under Section 342 of the Act, the District Court is required to determine the question of payment of compensation in case of a dispute between the parties. It is apparent from the record that both the parties were given opportunity to lead their evidence and the applicant led evidence of various witnesses. She also relied upon the report of the concerned Department, which was to the effect that the sluice gate at Nevgi Nagar bund was inspected and it was seen that the low tide was just starting and water from the field opposite the road was draining

through the channels into the river through newly constructed sluice fitted with PVC pipes and automatic valves as the depth of the channel was more at that point and very little water used to go further to drain from old sluice gate at Nevgi Nagar bund and, therefore, it was obvious that most of the fish grown in paddy field opposite the road escaped through the newly constructed sluice/PVC pipes. However, it could not be assessed as to how much loss the party had suffered on account of construction as they had no records of the previous catch over the years. It appears that on the basis of this report, the compensation of Rs.10,000/- was granted and paid to the applicant.

7. However, the learned Addl. District Judge, while adjudicating the matter, has taken into account the evidence led by the witnesses of the applicant and has come to the conclusion that the said evidence was not of any help in order to determine the exact quantum of loss caused to the applicant and, as such, the application came to be rejected.

8. On critical perusal of the reasonings adopted by the learned Addl. District Judge, I do not find any jurisdictional error committed by the learned Addl. District Judge. In fact, she has appreciated the entire evidence in proper perspective. The learned Counsel for the applicant

wanted me to go through the evidence of the witnesses in order to show that the learned Addl. District Judge did not consider the evidence in proper manner. However, it cannot be overlooked that it is not an appeal and we are not sitting over the order in appeal. The scope of inquiry contemplated by Section 115 of the Code of Civil Procedure is restricted in order to see whether there is any jurisdictional error committed by the learned District Judge and the answer in this regard is firmly in the negative.

9. For the reasons recorded above, I hold that no interference is required to be made in the said order. In the result, the petition stands dismissed with no order as to costs.

P.V. KAKADE, J.

ssm.